

May 4, 2016

Exhibit 1

An Act

HOUSE BILL 16-1109

BY REPRESENTATIVE(S) Becker J. and Becker K., Coram, Brown, Buck, Dore, Lebsock, Mitsch Bush, Arndt, Conti, Fields, Hamner, Humphrey, Lontine, Moreno, Priola, Saine, Salazar, Williams, Hullinghorst;
also SENATOR(S) Sonnenberg and Donovan, Baumgardner, Cooke, Crowder, Johnston, Lambert, Neville T., Newell, Roberts, Scott, Todd, Woods.

CONCERNING LIMITS THAT THE BASIC TENETS OF COLORADO WATER LAW
PLACE ON THE ABILITY OF CERTAIN FEDERAL AGENCIES TO IMPOSE
CONDITIONS ON A WATER RIGHT OWNER IN EXCHANGE FOR
PERMISSION TO USE FEDERAL LAND.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add 37-92-310 as follows:

37-92-310. Colorado water rights protection act - short title - legislative declaration - limitation on actions. (1) **Short title.** THE SHORT TITLE OF THIS SECTION IS THE "COLORADO WATER RIGHTS PROTECTION ACT".

(2) **Legislative declaration.** (a) THE GENERAL ASSEMBLY RECOGNIZES THAT:

(I) WATER RIGHTS APPROPRIATED UNDER SECTION 6 OF ARTICLE XVI OF THE COLORADO CONSTITUTION ARE USUFRUCTUARY PROPERTY RIGHTS TO USE WATER AND ARE PROTECTED UNDER AMENDMENT V OF THE UNITED STATES CONSTITUTION AND SECTION 15 OF ARTICLE II OF THE COLORADO CONSTITUTION;

(II) THE PRIMARY ECONOMIC VALUE OF A WATER RIGHT STEMS FROM ITS PRIORITY DATE AND THE AMOUNT OF WATER THAT IT ALLOWS THE OWNER OF THE WATER RIGHT TO DIVERT AND PLACE TO BENEFICIAL USE WITHIN THE PRIORITY SYSTEM AND IN ACCORDANCE WITH TERMS OF THE WATER RIGHT DECREE;

(III) THE RIGHT TO SELL A WATER RIGHT IS AN ESSENTIAL ELEMENT OF THE WATER RIGHT; AND

(IV) A WATER RIGHT IS A USUFRUCTUARY PROPERTY RIGHT THAT MAY EXIST SEPARATE AND APART FROM ANY INTEREST IN LAND.

(b) THE GENERAL ASSEMBLY FURTHER RECOGNIZES THAT:

(I) THE HISTORY BETWEEN THE FEDERAL GOVERNMENT AND THE STATES IN THE RECLAMATION OF THE ARID LANDS OF THE WESTERN STATES IS BOTH LONG AND INVOLVED. THROUGHOUT THAT HISTORY, CONGRESS HAS MAINTAINED A PURPOSEFUL AND CONTINUED DEFERENCE TO STATE WATER LAW.

(II) PURSUANT TO 43 U.S.C. SEC. 666, COMMONLY KNOWN AS THE "McCARRAN AMENDMENT", CONGRESS WAIVED THE SOVEREIGN IMMUNITY OF THE UNITED STATES FOR LAWSUITS IN STATE COURTS REGARDING THE ADJUDICATION OR ADMINISTRATION OF WATER RIGHTS; AND

(III) IN COLORADO, WATER RIGHTS ARE ESTABLISHED BY MAKING AN APPROPRIATION AND ARE CONFIRMED BY STATE WATER COURTS.

(c) THEREFORE, PURSUANT TO FEDERAL AND COLORADO LAW, THE GENERAL ASSEMBLY DETERMINES AND DECLARES THAT:

(I) THE UNITED STATES FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT ARE SUBJECT TO THE JURISDICTION OF COLORADO WATER COURTS FOR THEIR WATER RIGHT CLAIMS IN COLORADO; AND

(II) NOTHING IN THIS SUBSECTION (2) PREVENTS THE FEDERAL GOVERNMENT FROM:

(A) PARTICIPATING IN WATER COURT PROCEEDINGS IN COLORADO;
OR

(B) SEEKING TERMS AND CONDITIONS IN WATER COURT TO PROTECT ITS WATER RIGHTS.

(3) **Limitation on actions.** (a) THE STATE ENGINEER AND THE DIVISION ENGINEERS SHALL NOT ENFORCE OR ADMINISTER EFFORTS BY THE UNITED STATES FOREST SERVICE OR BUREAU OF LAND MANAGEMENT THAT:

(I) REQUIRE FULL OR PARTIAL TRANSFER OF TITLE TO WATER RIGHTS TO THE UNITED STATES FOREST SERVICE OR BUREAU OF LAND MANAGEMENT;

(II) RESTRICT THE USE OR ALIENABILITY OF THE WATER RIGHT AS A CONDITION TO A RIGHT-OF-WAY, SPECIAL USE PERMIT, OR OTHER AUTHORIZATION BY THE UNITED STATES FOREST SERVICE OR BUREAU OF LAND MANAGEMENT TO USE FEDERALLY OWNED LANDS; OR

(III) REQUIRE A THIRD PARTY SUPPLYING WATER TO A UNITED STATES FOREST SERVICE OR BUREAU OF LAND MANAGEMENT SPECIAL USE PERMITTEE TO SUPPLY THE WATER FOR A SET PERIOD OF TIME OR IN A SET AMOUNT.

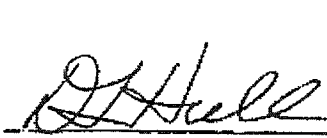
(b) NOTHING IN THIS SUBSECTION (3) IMPACTS THE STATE ENGINEER'S OR A DIVISION ENGINEER'S AUTHORITY TO ENFORCE AND ADMINISTER THE TERMS AND CONDITIONS OF A WATER COURT DECREE OR OTHER JUDICIAL DECREE.

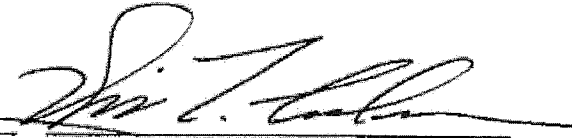
(4) THIS SECTION DOES NOT GRANT, CONFIRM, DENY, OR IMPACT ANY LEGAL AUTHORITY OF THE FEDERAL GOVERNMENT TO IMPOSE BYPASS FLOW REQUIREMENTS IN CONNECTION WITH A SPECIAL USE PERMIT OR OTHER AUTHORIZATION.


(5) THIS SECTION DOES NOT GRANT, EXPAND, CONTRACT, OR LIMIT THE LEGAL AUTHORITY OF ANY STATE OR LOCAL GOVERNMENT RELATED TO PERMITTING OR REGULATORY ACTIONS IN CONNECTION WITH LAND USE OR OTHER PERMITTING APPROVALS OR AUTHORIZATIONS.


SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

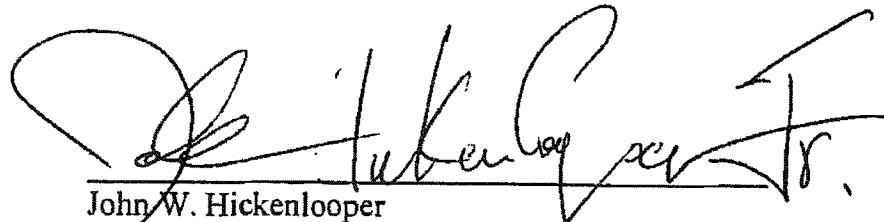

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES


Bill L. Cadman
PRESIDENT OF
THE SENATE


Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES


Effie Ameen
SECRETARY OF
THE SENATE

APPROVED 10:33 am 4/21/16


John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

Randy Wyrick
Vail Daily

May 2, 2016

Colorado lawmakers block future federal water grabs



Gov. John Hickenlooper signs the Colorado Water Rights Protection Act, with sponsors state Senators Kerry Donovan, D-Vail, far left, and state Rep. Diane Mitsch Bush, D-Steamboat Springs, to Hickenlooper's right. The bill thwarts federal efforts to grab water and water rights without paying for them.

Colorado lawmakers unanimously made federal water grabs almost impossible.

The Colorado Water Rights Protection Act passed both the Colorado House and Senate without a single dissenting vote. The bill thwarts federal efforts to control or own water that begins on or passes through federal land and to do so without paying for it.

That's important in our region because about 80 percent of Eagle and Summit counties are federal land, said Glenn Porzak, one of the world's leading water attorneys.

In fact, the Eagle River Water & Sanitation District and Upper Eagle Regional Water Authority both have water infrastructure on federal lands.

Rick Sackbauer, Eagle River Water & Sanitation District board chair, called the bill “a great victory for water right holders in the Eagle River valley and throughout Colorado.”

“The authority and other water providers have made enormous financial investments in water rights and water infrastructure in reliance on state laws,” said George Gregory, Upper Eagle Regional Water Authority board chair.

Water rights trifecta

Porzak — with Porzak, Browning & Bushong — is water counsel for Eagle River Water & Sanitation District, Upper Eagle Regional Water Authority and many others. He worked on the bill for three years.

He said the legislation does three things:

1. Forces the feds to buy water rights, instead of taking them by manipulating policy.
2. Forces the feds to go through state water court, in compliance with federal law.
3. Orders Colorado’s state engineer not to enforce any water-rights restriction by the U.S. Forest Service or the Bureau of Land Management and provides tools for water-right holders to fight these agencies in court if necessary.

In other words, if the feds want water rights, then they have to buy them like everyone else does.

“Water rights are a saleable commodity,” Porzak said. “They’re trying to get the water for free. This bill creates a financial disincentive. (The feds) can issue a directive, but they do so at their peril.”

Why it began

The impetus for the bill began in 2012, when the U.S. Forest Service demanded that ski areas, in exchange for renewing their leases on public land, turn over their private state issued water rights to the federal government.

The ski areas sued, and the Forest Service lost on procedural grounds. The court ordered the Forest Service to go back to the drawing board. And, while improvements have been made in the context of ski-area policy, the Forest Service has subsequently issued other policy directives that raise additional concerns for private water-right holders throughout Colorado.

The Forest Service said it was trying to make sure water rights stay with the ski areas and aren’t sold separately if the ski area is sold.

“This legislation is not pie in the sky. It has real substance to it,” Porzak said.